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Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA, *Petitioner*

v.

**ONE 1936 MODEL FORD V-8 DE LUXE COACH,
MOTOR No. 18-3306511, COMMERCIAL CREDIT
COMPANY, CLAIMANT**

*On Writ of Certiorari to the United States Circuit Court of Appeals
for The Fourth Circuit*

BRIEF FOR THE CLAIMANT

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THE UNITED STATES OF AMERICA, PETITIONER,

vs.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR
No. 18-3306511; COMMERCIAL CREDIT COMPANY,
CLAIMANT

On Writ of Certiorari to the United States Circuit Court of Appeals
for The Fourth Circuit

BRIEF FOR THE CLAIMANT

Opinions Below

The opinion of the District Court (R. 5-13) is reported in 19 F. Supp..470. The opinion of the Circuit Court of Appeals (R. 26-28) is reported in 93 F. (2d) 771.

Jurisdiction

This case comes before the United States Supreme Court upon writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit under Section 240 of the Judicial Code granted on April 4, 1938 by this Court on application by the Government.

Statute Involved

Section 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. III, Title 27, Sec. 40a), provides:

(a) *JURISDICTION OF COURT.* — Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(b) *CONDITIONS PRECEDENT TO REMISSION OR MITIGATION.* — In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal

local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

Statement

The facts of this case are stipulated by counsel in the Bill of Exceptions (R. 18-20) and are as follows:

"The Ford automobile was sold by the Greenville Auto Sales, Incorporated (hereinafter referred to as the dealer) on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price of the Ford Automobile exchanged an old car paid for by him, but registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract, but the contract, drawn by an agent of the dealer, was made in the name of his brother, Landrum P. Walker, who formally executed the agreement by signing it "L. P. Walker", and who was commonly known as Paul Walker. Benjamin Guy Walker and his wife at the time of the sale were having some domestic infelicities and he had the conditional sales contract drawn and executed in the name of his brother in order to place the title of the new automobile "where his wife could not reach it". Landrum P. Walker had no interest in the transaction except to comply with the request of his brother. Guy Walker made the transaction with the dealer through its agent, Mr. Elrod. He selected the car he wanted; made the agreement and handled the transaction

himself. Paul Walker drove the car from the place of business of the dealer. Guy Walker at the time, and for two or three weeks after the purchase of the car, was living at the home of his brother. Only one payment was made on the conditional sales contract before the seizure, and that was made by Guy Walker to the dealer.

"It was admitted by all the parties that Benjamin Guy Walker had a previous record and a reputation for violating both the state and federal laws relating to liquor. His brother, Paul Walker, was convicted of violating the National Prohibition Act in 1929, and was duly sentenced therefor in this court, but his record and reputation since serving the sentence imposed were good.

"On the date the sale was consummated the dealer submitted the contract to the Commercial Credit Company, the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check for the same.

"The claimant before accepting the assignment of the sales contract from the dealer made an investigation of Landrum P. Walker by inquiring at the headquarters of the Sheriff of Greenville County and at the headquarters of the Chief of Police of the City of Greenville, the county and city where the interest was acquired, and the locality where Landrum P. Walker resided, as to the record and reputation for violation of the liquor law by Landrum P. Walker. The information was received from such offices that Landrum P. Walker had no such record or reputation. The information was given, however, from the Sheriff's office that Guy Walker had both a record and reputation as a violator of the state and

federal laws relating to liquor. No inquiry or investigation was made at the headquarters of the principal Federal Internal Revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Benjamin Guy Walker, the admitted real owner and purchaser of the automobile.

"The claimant had Landrum P. Walker investigated in August, 1936 by the Business Service Bureau of Greenville, South Carolina, in connection with his purchase of a refrigerator. However, no investigation at that time was made as to whether or not he had a reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived, and such was the reputation given him by his employer at that time.

"The claimant purchased the conditional sales contract in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers."

Summary of Argument

The only issue in this case is whether the court had jurisdiction to exercise its discretion in remitting the forfeiture. The Government recognized that as the sole issue. The Government does not allege in its specifications of error or in its arguments before this court that the District Court abused its discretion or acted arbitrarily or capriciously. The issue is well stated by the Government on page 27 of its brief, where it says:

"There was no room for the exercise of discretion in this case, because the conditions prescribed by the statute, which must be complied with before the court has jurisdiction to exercise any discretion, had not been met by the claimant."

Claimant contends that the evidence justified the finding by the lower courts that claimant complied with the conditions precedent mentioned in (b) (1), (2) and (3) of the statute. The Government admits that claimant met these requirements except in two particulars, which the Government claims is fatal to claimant, to wit: that claimant did not prove it had no reason to believe that the automobile would be used illegally, as required in (b) (2), and that claimant did not make the investigation required in (b) (3). Claimant contends that it did meet these conditions precedent, and that the record supports its contention.

With respect to the issue as to "reason to believe", the facts, as stipulated in the record, are as follows:

"The claimant purchased the conditional sales contract in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. *It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by the federal officers.*" R. 20 (Italics ours)

Notwithstanding this finding of fact by the District Court, and the stipulation that it is the fact, the Government contends that it is not the same or equivalent to a finding or stipulation that claimant had no "reason to believe". The District Court in making the finding unquestionably intended it to be a finding that the claimant had no "reason to believe" because on such finding the court took jurisdiction and exercised its discretion.

Claimant contends the court was justified in so doing, and that the words in the finding and stipulation "had no knowledge, information or suspicion of the true facts" are certainly as broad, and if anything broader, than a finding that claimant had no "reason to believe." The Circuit Court of Appeals, after reviewing the facts concluded "The claimant therefore complied with the conditions of sub-section (b) (1) and (2), for it had acquired its interest in the vehicle in good faith, and had neither knowledge nor *reason to believe* that it would be illegally used." R. 27 (*Italics ours*)

With respect to the issue as to the statutory investigation, claimant contends that the lower courts were right in holding that claimant had met the requirements of (b) (3) when claimant investigated, as required by the statute, Landrum P. Walker, who signed the conditional sales contract as purchaser, and particularly in view of the stipulated facts that claimant believed Landrum P. Walker, who signed the contract, was the purchaser and owner of the automobile. The Government contends that claimant was required by the statute to investigate Benjamin Guy Walker, the real owner and purchaser of the automobile and for whom Landrum P. Walker apparently was the nominal or straw purchaser. Claimant however had no knowledge, information or suspicion that Benjamin Guy Walker was the real owner or purchaser until after the seizure. The District Court in its opinion sets forth the report of the Judiciary Committee of the Senate and House, and concludes that the statute did not require an investigation of Benjamin Guy Walker under the circumstances. The Circuit Court of Appeals said on this point (R. 28)

"But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest

in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation."

The interest of Benjamin Guy Walker in the automobile was a fact to enter into the exercise of discretion by the court and not a jurisdictional point. As the Circuit Court points out that even though the District Court has jurisdiction and the lienor has complied with the statutory requirements, nevertheless the court may in its discretion deny remission when any reasonable grounds exist for such action.

ARGUMENT

I

THE COURTS BELOW DID NOT ERR IN HOLDING THAT CONDITION (b) (2) OF THE STATUTE HAD BEEN COMPLIED WITH, AND THAT CLAIMANT HAD NO REASON TO BELIEVE THAT THE AUTOMOBILE WOULD BE ILLEGALLY USED.

The Government in its argument under this point (Government's Brief 10-15) does not point out one single circumstance or piece of evidence in the stipulation of facts in support of its argument that the Courts below were in error, but instead the Government relies entirely upon conjecture and inference in no way based upon the facts as stipulated.

There is no fact in the record to support the Government's statement that Claimant closed its eyes to an obvious risk and then claimed it had no reason to believe there was such a risk. On the contrary, the stipulation

of fact states positively that Claimant believed Landrum P. Walker was the purchaser and owner of the automobile. (R. 20). The reasons for such a belief are not enumerated. Therefore, the positive statement of fact that Claimant believed Landrum P. Walker to be the purchaser and owner must include within it an admission by the Government that Claimant did everything reasonable and proper to justify the belief, otherwise the belief would not have been stipulated as a fact. The criticism that Claimant did not ascertain the true facts because it did not inquire of Landrum P. Walker or the dealer whether Landrum P. Walker was the real purchaser and user of the car is not well founded. When Landrum P. Walker and the dealer entered into the conditional sale contract for the sale of the car, that in effect answered such inquiry. Furthermore, the dealer, when he assigned the contract to Claimant thereby represented to the Claimant that Landrum P. Walker was the purchaser and owner of the car.

If there were any evidence or facts in this case which would have required an ordinarily prudent person to make inquiry of any person other than Landrum P. Walker then the Government should not have stipulated as a fact that Claimant in good faith believed Landrum P. Walker to be the purchaser and owner. Having so stipulated, the Government should not now be heard to question its own stipulation of fact in an effort to discredit the finding of the Court that Claimant had no reason to believe the car would be used illegally.

The general statement by the Government that automobiles are frequently used in violation of law and are especially adapted to violating the liquor laws is an erroneous assumption of fact and not justified by the record in this case. Of the millions of automobiles sold and used in this country only an infinitesimal number

are seized for violation of the liquor laws. This in itself is not sufficient to give Claimant "reason to believe" that every car with which it deals is likely to be used in violation of the liquor laws. The Government would have this Court take judicial notice of such erroneous assumption of fact and place undue and impossible burdens upon Claimant to investigate persons of whom it had no knowledge. If the contention urged by the Government were adopted, the words "knowledge and reason to believe", as used in the statute, would be meaningless and mere surplusage. "Reason to believe" would be present in every case in which an automobile is sold. "Knowledge and reason to believe" must obviously be acquired from some fact or circumstance present in each particular case sufficient to put the Claimant upon inquiry. There is no such fact or circumstance present in this case.

The Government broadly infers that the Claimant casually and negligently made its investigation. The Claimant submits that it used more than ordinary care in its efforts to comply with the statute by making inquiry of two law enforcement agencies as to the record and reputation of Landrum P. Walker, the purchaser of the automobile, based upon the documents and the information furnished to it. (R. 19). The Government alleges negligence on the part of the Claimant, but offers no convincing fact or circumstance to show that the Claimant acted other than any reasonably prudent and law-abiding person would act under the same circumstances.

THE COURTS BELOW DID NOT ERR IN HOLDING THAT CONDITION (b) (3) HAD BEEN COMPLIED WITH BY THE CLAIMANT BY VIRTUE OF ITS INVESTIGATION OF LANDRUM P. WALKER, THE APPARENT PURCHASER OF THE AUTOMOBILE, UNDER THE CONTRACT.

The Government insists that the Claimant should have determined who was the real purchaser of the automobile, and should have conducted the statutory investigation of such purchaser. Obviously in view of its searching investigation of the record and reputation of Landrum P. Walker, the signer of the contract, the Claimant would have investigated the record and reputation of Benjamin G. Walker, if it had knowledge of the existence of Benjamin G. Walker in the transaction. Since it had no such knowledge and the statement of facts so conceded (R. 20), there obviously would be no basis for alleging that Benjamin G. Walker should have been investigated.

The whole issue of this case is narrowed to the single proposition as to whether an obligation was imposed upon the Claimant to secure knowledge of the connection of Benjamin G. Walker with the transaction. It is admitted that the Claimant had no knowledge of the connection of Benjamin Walker with the transaction, nor has it been shown that any fact or circumstance existed which would put the Claimant on notice that the transaction was in any respect other than it appeared on its face.

The Circuit Court below has had this proposition before it twice, in this case and in *C. I. T. Corporation vs. United States*, 89 F. (2d) 977. The Circuit Court below in this case said:

"But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his

in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, *unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation.*" (*Italics ours*)

The Claimant, under the circumstances of this case, was not obliged to look beyond the contract which was assigned to it. Landrum Walker signed the contract as purchaser, undertook the obligation created by the contract and received in return therefor the right to the use and enjoyment of the car. The Government does not deny that Claimant has acquired an interest in the automobile. Its interest was and could only be acquired under the contract signed by Landrum Walker. Benjamin Walker did not sign the contract, undertook none of the obligations and was not a party to *the contract* out of which the interest of the Claimant arose. The statute reads that if the Claimant's interest arises out of a *contract* "under which any person having a record or reputation * * * has a right with respect to the vehicle" such person shall be investigated. Claimant had no knowledge or information, and the statement of facts so concedes (R. 20) that any person other than Landrum Walker had any interest whatever in the car. It is asserted by the Government that *under the contract* Benjamin Walker was the real party at interest in respect to the car. This is not so in respect to the contract held by Claimant. Whatever right Benjamin Walker had to the car was not shown on the contract which Claimant acquired but existed through an arrangement between Landrum Walker and Benjamin Walker unknown to Claimant. Benjamin Walker was not, therefore, a person to be investigated under the statute.

Not a single circumstance has been shown to exist which would have indicated to the Claimant that the transaction was other than it appeared to be upon its face. It has not been shown that the Claimant acted or failed to act other than a reasonably prudent person would have acted under the circumstances.

The Government asserts that in so-called straw man transactions, the statute applies to the real purchaser and requires that the real purchaser be investigated in accordance with the statute. (Government Brief P. 18). However, the Government apparently believes that such a construction of the statute might be too strict (Government Brief P. 22) and might place too great a burden upon the Claimant where a straw purchaser transaction is involved (Government Brief P. 23). But it contends that the Claimant should at least be required to make a reasonable effort to ascertain the identity of the real purchaser so that he may be investigated as contemplated by the statute.

It is obvious that in order to impose such an obligation upon the Claimant, which the statute by its terms does not do, it must be shown that the Claimant had knowledge of some fact or circumstance sufficient to put it upon notice that the real facts of the transaction were other than as they appeared on the documents themselves or other surrounding circumstances. This has not been shown. The statute does not command lienors, at their peril, to discover all of the facts back of every contract which they acquire. It lays down definite and specific rules to be followed. Its purpose is to protect the rights of innocent lienors. If there is any defect in the statute whereby the opportunities to defraud the revenue are increased, that problem is for the legislature and not the courts. However, the opportunities to defraud the revenue would not necessarily be increased by upholding the decision of the District Court in this case. The

District Courts may still, in their discretion, refuse to remit forfeitures even though Claimants have shown compliance with the statute.

The Government concedes this reasoning to be sound law (Government Brief P. 24). The Fourth Circuit apparently assumed the decision of the Eighth Circuit in *Federal Motors Finance Company vs. United States*, 88 F. (2d) 90 to be in conflict with the decision of the Fourth Circuit in this case. We agree with the Government that the decision of the Eighth Circuit in the *Federal Motors Finance Company* case is, however, susceptible to other interpretation (Government Brief P. 26). We submit that the *Federal Motors Finance Company* decision is susceptible to the interpretation that the Court, after taking jurisdiction, exercised its discretion to deny remission of forfeiture because the Court believed that remission of forfeiture would afford a too easy avenue of escape by bootleggers in defrauding the public revenue, and was therefore a circumstance to be taken into consideration in determining the Claimant's petition for remission. In the case at bar, however, the Court apparently recognized that the statute was one for relief of innocent lienors and, therefore, to exercise its discretion to the prejudice of an innocent lienor under the circumstances of this case, would be to disregard the mandate of Congress.

III

THE CIRCUIT COURT DID NOT ERR IN HOLDING THAT THE DISTRICT COURT, CONSIDERING ALL OF THE CIRCUMSTANCES, PROPERLY EXERCISED ITS DISCRETION IN THIS CASE.

The Government does not contend that the District Court improperly exercised its judicial discretion in granting the remission. It argues that the District Court had no discretion to remit the forfeiture in this

case since the Claimant had not complied with the statute. The Claimant feels that it has shown compliance with the statute. To hold that the District Court did not have the "exclusive jurisdiction" to remit the forfeiture in this case after consideration of all the facts and circumstances would virtually result in stripping from the statute the flexibility which is so essential in giving effect to the intentions of Congress as expressed in the statute.

The section of the Act giving to the District Courts exclusive jurisdiction to remit or mitigate forfeitures has been interpreted in numerous decisions. The Circuit Court of Appeals, Second Circuit, in affirming the District Court's decision denying a claimant's petition under the Act in *United States vs. One 1935 Dodge Rack-Body Truck, Motor No. T-13-6444, License 138-957*, 88 F. (2d) 613, at 615, stated:

"Although the statute under which this claim was made does not in terms require the Court to remit or mitigate the forfeiture; it does give *exclusive jurisdiction* to do so, making the exercise of such jurisdiction subject to certain conditions precedent. While even if such conditions are fulfilled, a claimant does not have the absolute right to remission or mitigation, he does have the right then to invoke the exercise of the Court's discretion. *That discretion is a judicial one, as distinguished from action merely arbitrary and capricious, and so it is subject to review if, though only if, it has been abused.*" (Italics ours)

In *Wilson Motor Company vs. United States*, 84 F. (2d) 630, the Circuit Court of Appeals, Ninth Circuit recognized the intention of Congress to confer exclusive jurisdiction upon the District Courts when it said at page 632:

"It defies common sense to suppose that the Congress intended in enacting the provisions for these forfeitures of vehicles that an obligation was imposed on great automobile companies having tens of thousands of automobiles operating throughout the whole United States on conditional sale contracts, to follow each one of them and prevent the purchaser from violating the prohibition or revenue laws, failing in which they irrevocably forfeited the automobile. Or that an obligation rested on the California owner so disposing of his car to assume such responsibility for its conduct in the States of Washington or New York.

"The Government's brief advises that prior to the Act of August 27, 1935, the procedure of the Government to afford relief to these innocent owners was under the provision of compromise powers given the Attorney General and the Treasury under Section 1661, 26 U. S. C. A. The brief cites cases in which this procedure was recognized. Having this practice of the Government in view, the solution of the question is found in the provision of Section 204 (a), as follows:

'Whenever, in any proceeding in Court for the forfeiture, under the internal revenue laws, of any vehicle (etc.) * * * the Court shall have exclusive jurisdiction to remit or mitigate the forfeiture.'

"The use of the word *exclusive* is significant. Congress thereby recognizes that relief had been given previously to the innocent owners by a procedure before other agents of the Government who are now deprived of that jurisdiction after a decree

The Circuit Court below in *C. I. T. Corporation vs. United States*, 285 F. (2d) 311, adopted the view expressed by the Court in the *Wilson Motor Company* case (*supra*) and stated at page 312:

"We agree with the Ninth Circuit that it was the intent of Congress by the enactment of Section 204 (a) of the Act of August 27, 1935, to withdraw from the officials named in the above sections the power to remit or mitigate the forfeiture of a vehicle or aircraft seized for violation of the internal revenue laws in regard to liquors and to confer exclusive jurisdiction over the same upon the Court in which any proceeding for forfeiture is filed."

The District Court below had both a thorough and far-reaching appreciation of the responsibility placed upon it by the statute. Its analysis and consideration of the problem presented to it included a narrative of the history of the Act, which is both enlightening and persuasive (R. 11-13).

The Court quoted and reviewed the reports the Committee on Judiciary of the Senate and House of Representatives and the hearings on the bill before it was enacted into law and properly concluded that they support the construction of the Court that it should exercise its discretion in this case.

Conclusion

For the reasons stated it is respectfully submitted that the District Court did have jurisdiction and admittedly exercised its discretion free of any arbitrary or capricious conduct, and accordingly the judgment of the Circuit Court of Appeals should be affirmed.

Respectfully,

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